

### Remarks

Claims 1-20 are pending in the present application. Claims 1, 7-9, 12 and 17 are amended herein. New claim 20 has been added. Applicant requests entry of the amendments and further examination of the present application in view thereof.

Claims 1, 9 and 12 have been amended to clarify that once the purchase request is received by the broadcast receiver, the purchase of the goods and services indicated in the stream of broadcast media is completed by ultimate receipt of the purchase data at the server, either in real time or through delayed transmission. See, e.g. Specification, Para. [0020]. Further, claims 7, 8 and 17 have been amended, and new claim 20 has been added, to clarify that, in one embodiment, when the purchased goods and services are one or more songs, the one or more songs (or the whole album) can be sent to the broadcast receiver. See, e.g. Specification, Para. [0018]. Applicant submits that the amendments are fully supported in the Specification, and that no new matter has been added to the application through the present amendment.

Applicant has previously entered the Declaration of Dr. Walter E. Thain, Jr., an independent expert in the field of wireless communications, on June 20, 2006, and filed a supplemental response on July 11, 2006, with the publication of a "User Guide" for the Pioneer Inno device (printing date unknown to applicant, but believed to be published in 2006 as document is ©2006). Applicant submitted the Declaration of Dr. Thain to detail the steps necessary to complete an electronic purchase transaction, which is in contrast to the actions commenced by pressing the button 1220 of *Kesling* (Para. 5). Applicant further submitted the User Guide to show that the device of *Kesling* was incapable of completing a purchase transaction absent the accounting support system supplied by Napster®, in contrast to the present invention. The Examiner was unpersuaded by each of Applicant's submissions.

The Examiner noted that the Declaration of Thain showed that *Kesling* does not support the completion of a purchase transaction, as opposed to showing that the broadcast receiver of *Kesling* does not generate a "purchase request." The Examiner also deemed that the User Guide was insufficient to show that the broadcast receiver of *Kesling* does not enable a "purchase request." Applicant traverses these assertions by the Examiner, but nonetheless, has amended the claims of the present application to

clarify that the purchase request, when made, causes a "completed purchase transaction," which is neither shown nor suggested by *Kesling*.

Applicant also notes the assertion in the Office Action that "the Board has stated that not only is the *Kesling, et al.*, disclosure enabling for the purposes of creating a broadcast receiver-generated purchase request, but further that the *Kesling et al.*, disclosure is enabling for the purposes for providing the technical detail necessary for one of ordinary skill in the art to actually carry out a radio-generated purchase," citing the Board's Decision at pp. 3-4. Applicant traverses this assertion. The Board's Decision merely states that there was no evidence in the record to support the contention that *Kesling* is not enabled for a "broadcast receiver-generated purchase request." See Decision, p. 4 ("The appellant has not provided evidence in support of that argument[ ].") The evidence of the Declaration of Thain and the User Guide clearly demonstrates that *Kesling* does not support this function.

#### *Rejection under 35 U.S.C. §102(e)*

Claims 1-13 and 15-19 stand rejected under 35 U.S.C. §102(e) as being unpatentable over *Kesling, et al.* (US Publication No. 2002/0132575). The Office Action stated that *Kesling, et al.*, discloses a method containing all elements of rejected claims. Applicant traverses these rejections and hereby requests reconsideration thereof in view of the claims as amended.

As stated above, the claims have been amended to clarify that once the purchase request is received by the broadcast receiver, the purchase of the goods and services indicated in the stream of broadcast media is completed by ultimate receipt of the purchase data at the server, either in real time or through delayed transmission. Furthermore, in respect to the embodiment of claims 7, 8 and 17, and new claim 20, the invention includes the element of, when the purchased goods and services are one or more songs, the one or more songs (or the whole album) can be sent to the broadcast receiver. *Kesling* simply does not support this functionality, as is shown by the Declaration and Thain and User Guide, which are of record in this case.

In order to reject the claims under 35 U.S.C. §102(e), *Kesling*, must disclose all elements thereof (MPEP §2141). Because *Kesling, et al.*, does not at least disclose the

element of the purchase request causing a completed purchase transaction, as is claimed in amended independent Claims 1, 9 and 12, which is likewise present in Claims 2-8, 10-13, and 15-20 as dependent thereupon, this ground of rejection cannot stand and Applicant hereby requests allowance of Claims 1-13 and 15-20.

*Rejection under 35 U.S.C. §103(a)*

The Office Action rejected Claim 14 under 35 U.S.C §103(a) as being unpatentable over *Kesling, et al.*, in view of an Official Notice regarding secure communication channels. It was stated that while *Kesling, et al.*, does not teach a secure communication channel, it is notoriously well known to employ secure communication channels when endeavoring to conduct transactions of the type disclosed by *Kesling, et al.* Applicant respectfully traverses this rejection in so far as it pertains to the claim as amended, and traverses the Official Notice and characterization of *Kesling, et al.*

Claim 14 is dependent from independent Claim 12, which includes the step of the broadcast receiver receiving a purchase request that causes a completed purchase transaction. As argued above, *Kesling* does not have this element, and Applicant submits that the suggested modification of *Kesling, et al.*, with an Official Notice of secure communication protocol does not disclose this element. In order to render obvious the presently claimed invention, the suggested combination must disclose all elements of the rejected claims. MPEP §2143. As the suggested combination fails to disclose at least the element of the broadcast receiver receiving a purchase request, the Applicant respectfully submits that Claim 14, as dependent on independent Claim 12, cannot be rendered obvious by the suggested combination and allowance thereof is respectfully requested.

Prior Art Made of Record

Applicant has reviewed the further prior art made of record in this application and considered pertinent to Applicant's disclosure but not relied upon to reject any claim.

Applicant agrees that the cited prior art is pertinent to Applicant's disclosure but does

not anticipate or render obvious, either singly or in combination, any currently pending or previously presented claim of the present application.

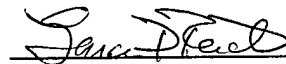
### Conclusion

In view of the foregoing Amendment and Remarks, Applicant respectfully submits that Claims 1-20, as amended, are in condition for allowance and notification to that effect is earnestly solicited. If necessary, the Examiner is invited to telephone Applicant's attorney (404-815-3380) to facilitate prosecution of this application.

No additional fees are believed due. However, the Commissioner is hereby authorized to charge any additional fees that may be required, including any necessary extensions of time, which are hereby requested to Deposit Account No. 03-0683.

Respectfully submitted,

Stephen A. Ewald  
By his Representatives,



Lance D. Reich  
Reg. No. 42,097

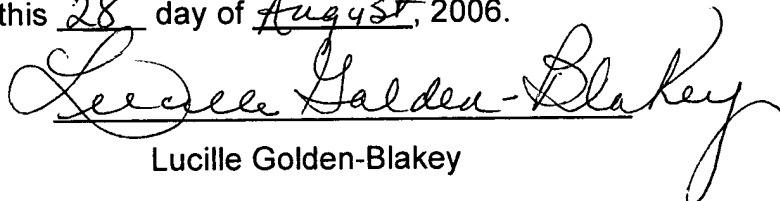
Date 8/28/2006

CARLTON FIELDS, P.A.  
1201 West Peachtree Street, Suite 3000  
Atlanta, Georgia 30309  
Telephone: (404) 815-3400  
Facsimile: (404) 815-3415  
Customer Number 49358

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### CERTIFICATE UNDER 37 CFR 1.8

The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop AF, Commissioner of Patents, P.O. Box 1450, Alexandria VA 22313-1450, on this 28 day of August, 2006.



Lucille Golden-Blakey